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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,

08 mj 0616-CAB
10 Case No.: ~~08 CR 0917 BEN~~

12 Plaintiff,

)

13 vs.

)

14 FORTINO ALVARADO ORTEGA,
15 ALEJANDRO ROSAS CAMPIZ,

) VIDEO TAPED DEPOSITION OF
ORDER MATERIAL WITNESSES:

16 Defendants.

) OMAR CUELLAR CASTILLO and PEDRO
GARCIA MATEO

17
18 _____
19 ORDER

20 Upon request of material witnesses OMAR CUELLAR CASTILLO and PEDRO GARCIA
21 MATEO (hereafter "Material Witnesses"), and their counsel Wayne C. Mayer, and good cause
22 appearing:

23 1. The MATERIAL WITNESSES in the case of USA v FORTINO ALVARADO
24 ORTEGA; ALEJANDRO ROSAS CAMPIZ case number ~~08 CR 0917 BEN~~ shall be deposed on

08 mj 0616 CAB

1 April 11, 2008 at 2:30 p.m. The deposition will take place in office of the United States Attorney
2 located at 880 Front Street, Fifth Floor, San Diego California.

3 2. All parties, meaning the United States and the defendants, shall attend the material witness
4 deposition. The arresting agency shall bring the material witnesses to the deposition. If, in custody,
5 the defendants shall be brought separately to the deposition and a marshal or border patrol agent
6 shall remain present during the entire proceeding.

7 3. The United States Attorney's Office shall provide a videotape operator ("operator") and, if
8 necessary, arrange for a court-certified interpreter to be present for the Material Witness. The cost
9 of the interpreter for the material witnesses shall be borne by the United States Attorney's office.

10 4. If the defendants need an interpreter other than the interpreter for the material witness (es)
11 (if any), then defense counsel will arrange for a court-certified interpreter to be present. The cost of
12 a separate interpreter for the defendant(s) shall be paid by the Court.

13 5. The United States Attorney's Office shall arrange for a certified court reporter to be
14 present. The court reporter shall stenographically record the testimony and serve as a notary and
15 preside at the deposition in accordance with Rule 28(a), Federal Rules of Civil Procedure. The cost
16 of the court reporter shall be borne by the United States Attorney's Office.

17 6. The deposition shall be videotaped, meaning a magnetic tape that records sound as well as
18 visual images. At the conclusion of the deposition, on the record, the witnesses or any party may
19 elect to have the witness(es) review the videotape record of the deposition to check for errors or
20 omissions and to note any changes. Any errors, omissions or changes, and the reasons for making
21 them, shall be stated in writing, signed by the witness(es), delivered to the notary in a sealed
22 envelope and filed in the same fashion as described in Paragraph 17 below, unless the parties agree
on the record to a different procedure.

23 7. The operator shall select and supply all equipment required to videotape the deposition and
24 shall determine all matters of staging and technique, such as number and placement of cameras and
25 microphones, lighting, camera angle, and background. The operator shall determine these matters
in a manner that accurately reproduces the appearance of the witness (es) and assures clear

1 reproduction of both the witness' testimony and the statements of counsel. The witness(es), or any
2 party to the action, may object on the record to the manner in which the operator handles any of
3 these matters. Any objections shall be considered by the Court in ruling on the admissibility of the
4 videotape record. All such objections shall be deemed waived unless made promptly after the
5 objector knows, or had reasonable grounds to know, of the basis for such objections.

6 8. The deposition shall be recorded in a fair, impartial, objective manner. The videotape
7 equipment shall be focused on the witness(es); however, the operator may when necessary or
8 appropriate, focus upon charts, photographs, exhibits or like material being shown to the
9 witness(es).

10 9. Before examination of the witness(es), the Assistant United States Attorney shall state on
the video record: his/her name; the date, time and place of the deposition; the name of the
11 witness(es); the identity of the parties and the names of all persons present in the deposition room.
12 The court reporter shall then swear the witness on the record. Prior to any counsel beginning an
13 examination of the witness(es), that counsel shall identify himself/herself and his/her respective
14 client.

15 10. Once the deposition begins, the operator shall not stop the videotape recorder until the
16 deposition concludes, except that, any party or the witness(es) may request a brief recess, which
17 request will be honored unless a party objects and specifies a good faith basis for the objection on
18 the record. Each time the tape is stopped or started, the operator shall state on the record the time
19 the recording stopped and the time it resumed. If the deposition requires the use of more than one
20 tape, the operator shall sequentially identify on the record the end and beginning of each tape.

21 11. All objections both as to form and substance shall be recorded as if the objection had
been overruled. The Court shall rule on the objections at the appropriate time. The party raising the
22 objection(s) shall prepare a transcript for the Court to consider. All objections shall be deemed
23 waived unless made during the deposition.

24 12. The Party offering the deposition into evidence at trial shall provide the Court with a
25 transcript of the portions so offered.

1 The court shall set a briefing schedule, if appropriate, and a date and time for the objection to be
2 heard as soon as reasonably practicable. At the hearing, the objecting party must establish to the
3 Court's satisfaction an appropriate legal basis for the material witness (es) to remain in custody. If,
4 after the hearing, the Court orders the release of the material witness (es), the material witness (es)'
5 attorney shall immediately present the release order to the Court for signature and filing. Before
6 release of the material witness (es) from custody the Government shall serve the material witness
7 (es) with a subpoena for the trial or next court date and a travel fund advance letter.

8 17. Upon request by either party, the videotape operator shall provide a copy of the
9 videotaped deposition to the requesting party at the requesting party's expense. After preparing the
10 requested copies, if any, the videotape operator shall turn the original videotape over to the notary
11 along with a certificate signed by the videotape operator attesting that the videotape is an accurate
12 and complete record of the recorded deposition.

13 18. The videographer shall file the original videotape, along with any exhibits offered during
14 the deposition, with the Court in a sealed envelope marked with the caption of the case, the name of
15 the witness and the date of the deposition. To that envelope, the notary shall attach the sworn
16 statement that the videotape is an accurate and complete record of the recorded deposition and a
17 certification that the officer duly swore the witness.

18 19. To the extent that the procedures set forth herein for videotaping vary from those set forth
19 in Rules 28 and 30 F.R.Civ.P., these variations are found to be good cause shown as allowed by
F.R. Civ. P. 29.

20 20. Unless waived by the parties, the notary must give prompt notice to all parties of the
21 filing of the video record of the deposition with the Court pursuant to Fed.R.Civ.P. 30(f)(3).

22 **IT IS SO ORDERED.**

23 DATE: 4/3/08


The Honorable Cathy Ann Bencivengo
UNITED STATES MAGISTRATE JUDGE

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PROOF OF SERVICE

Case Name: U.S.A. vs. FORTINO ALVARADO ORTEGA; ALEJANDRO ROSAS CAMPIZ

Case Number: 08 CR 0917 BEN

I am employed in the County of San Diego, State of California and over the age of eighteen years. I am not a party to the within action. My business address is 4619 Van Dyke Avenue, San Diego, California 92116.

I served the document(s) listed below on opposing counsel by causing to be delivered a efile copy thereof to the office of the Clerk, 880 Front Street, San Diego, California 92189 and served by email and fax on the parties listed herein.

Date Served: April 3, 2008

Documents Served:

- ORDER VIDEO TAPED DEPOSITION OF MATERIAL WITNESSES; OMAR CUELLAR CASTILLO and PEDRO GARCIA MATEO
- PROOF OF SERVICE

Parties Served: Jeffrey Moore, Assistant United States Attorney; Karen P. Hewitt, United States Attorney
I also caused an additional copy to be served by email and fax on the attorney(s):

opcleary@pacbell.net

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Assistant United States Attorney

880 Front Street, Fifth Floor

San Diego, CA 92101

Dated: April 3, 2008

s/Wayne C. Mayer

Wayne C. Mayer